THE HON'BLE SRI JUSTICE C.V. RAMULU

+W.P.No.12492 of 2004

%Dated 01-8-2007

Between:

The Management of St.Joseph's
Education Society, rep. by its
Secretary, Sri U.G. Reddy,
King Koti, Hyderbad … Petitioner

and

The Asst. Commissioner of Labour,
Hyderabad-III and Controlling
Authority under Payment of Gratuity
Act,1972, T.Anjaiah Karmika
Bhavan, R.T.C. Cross Roads,
Hyderabad and another … Respondents

!Counsel for the Petitioner : SHRI A.K. JAYAPRAKASH RAO

^Counsel for Respondent No.1: GOVT.PLEADER FOR LABOUR
Counsel for Respondent No.2: NONE APPEARS

<GIST:

> HEAD NOTE:

? Cases referred

1. 1994 Lab I.C. 1542
2. 1989(1) LLN 624
3. AIR 2004 SC 1426
4. 2003(4) ALT 432

5. 1999(III) LLJ (Suppl.) 296

THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, the 1st day of August,2007

W.P.No.12492 of 1997

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W.P.No.12492 of 1997

ORDER:

This Writ Petition is filed by the Management of St.Joseph's Educational Society represented by its Secretary, King Koti, Hyderabad seeking a Certiorari to call for the records relating to the Order passed by the Controlling Authority under Payment of Gratuity Act,1972 and Assistant Commissioner of Labour, Hyderabad-III in Case No.PG/4/96, dated 25-4-1997 and quash the same as arbitrary, illegal and without jurisdiction.

It appears, respondent No.2 joined as a School Assistant in the School run by the petitioner-society with effect from 22-6-1981 and resigned from service on 26-9-1992 and was relieved on 30-9-1992. At the time of relieving him from service, he was not paid the due gratuity by the Management. Therefore, he filed Case No.PG/4/96 before the 1st respondent-Controlling Authority. He also claimed that his last drawn salary was Rs.3,839/- per month and prayed for payment of gratuity together with 10% interest till the date of payment. Petitioner herein filed a counter before the 1st respondent stating that the Payment of Gratuity Act,1972 (for short 'the Act') is not applicable to its establishment and the educational institution is not a commercial establishment. Before the Controlling Authority, respondent No.2

herein examined himself as A.W.1 and marked Ex.A1. No oral or documentary evidence was adduced by the Management. After going through the entire record, the objection raised by the Management was overruled by the 1st respondent and it was held that the 2nd respondent is entitled for gratuity under the Act with simple interest at 10% per annum till the date of payment and directed the Management to deposit the gratuity amount of Rs.24,362.90 together with interest till the date of payment, within 30 days from the date of Order. Aggrieved by the same, the present Writ Petition is filed.

Learned counsel for the petitioner strenuously contended that the provisions of the Act are not applicable to the educational institutions. There was no notification issued by the Government under Section 1(3)(b) of the Act making the Act applicable to the educational institutions. Though such a plea was taken before the 1st respondent, it had brushed aside the legal arguments and decisions relied upon and passed orders allowing the claim on the basis of Judgment rendered by the Bombay High Court in **GURUDEO AYURVED MAHAVIDYALAYA, GURUKUNJ ASHRAM v. MADHAV**[1]**.** In fact, the decision rendered by this Court in **S.M.V.M. POLYTECHNIC, TANUKU v. GOVT.OF A.P.**[2] is squarely applicable to the facts of this case. Though the said judgment is binding, the 1st respondent did not follow the same. Therefore, the impugned Order passed by the 1st respondent is arbitrary, illegal and contrary to the Judgments rendered by this Court and the Apex Court. Learned counsel, in this regard, relied upon a Judgment reported in **AHMEDABAD PRIVATE PRIMARY TEACHERS' ASSOCIATION v. ADMINISTRATIVE OFFICER**[3] and submitted that the Teachers do not fall to be

categorized as ‘employees’ within the meaning of the provisions of the Act.

In spite of service of notice, none appeared for the 1st respondent.

This Writ Petition is filed in spite of there being an effective alternative remedy by way of an appeal under Section 7 of the Act. It is stated that since filing of appeal requires meeting of onerous condition of depositing entire amount awarded by the Controlling Authority and since the Authority has no jurisdiction to entertain the petition, this Writ Petition has been preferred.

The only question that falls for consideration in this Writ Petition is whether the provisions of the Act are applicable in case of a Teacher.

There is no dispute that the 2nd respondent worked as a School Assistant in the School maintained by the petitioner-society from 22-6-1981 to 30-9-1992. The only contention of the petitioner is that the provisions of the Act are not applicable in case of the Teachers working with it. Though initially it was pleaded that it is an institution and not a commercial organization and the provisions of the Act are not applicable, but now before this Court, it is pleaded that since the 2nd respondent is a Teacher, the provisions of the Act are not applicable in the light of the Judgment in **AHMEDABAD PRIVATE PRIMARY TEACHERS’ ASSOCIATION**’s case (1 supra). In this regard, it may be necessary to notice paragraph-25 of the said Judgment, which reads as under:

> “25. The Legislature was alive to various kinds of definitions of word 'employee' contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of 'employee' all kinds of employees, it could have as well used such wide language as is contained in S. 2(f) of the Employees' Provident Funds Act, 1952 which defines 'employee' to mean 'any

> person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of (an establishment). . . . . Non-use of such wide language in the definition of 'employee' in S. 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition.

Further, at paragraph-26, it was held as under:

> "26. Our conclusion should not be misunderstood that teachers although engaged in very noble profession of educating our young generation should not be given any gratuity benefit. There are already in several States separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. It is for the Legislature to take cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subject-matter solely of the Legislature to consider and decide."

From the above, it is seen that the Teachers do not come under the definition of 'employee' as per the provisions of the Act. However, it was made clear that in several States, there are already, separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions, which are more or less beneficial than the gratuity benefits provided under the Act and it is for the Legislature to take cognizance of situation of such Teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard.

Now, the question to be considered is whether the 2nd respondent, as a Teacher of a private unaided recognized School, is entitled to gratuity either under the Act or under the A.P. Education Act and the Rules made thereunder. Rule 18 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules,1993, which is relevant for this case, reads as under:

"18. Criteria for fixing fee structure and allocation of revenue earned as fee:-

(1)……..

(2)……

(3)…….

(4) The fees collected from the students shall be allocated as to meet the following requirements:

(a) to (d)…….

(e) 15% of the fees collected shall be earmarked as management's contribution towards staff benefits like gratuity, teachers provident fund, Group Insurance Scheme etc.

While considering the said provision in **SUSHILA THOMAS v. H.M.T. WELFARE AND CULTURAL ORGANIZATION**[4] this Court held as under:

"7. From the above rule, it is clear that out of the fees collected from the students, 15% shall be earmarked as management's contribution towards staff benefits like gratuity etc. Apart from that, the respondent-management being an educational institution, is cast upon certain statutory duties to be followed under the rules and regulations framed by the Government of Andhra Pradesh. The respondent-institution may not be treated as an institution on par with Governmental educational institution functioning under the State of Andhra Pradesh for the purpose of pension etc., but the petitioner is definitely, entitled for the gratuity, as, as stated above, there is a duty cast on the management, under Rule 18 to earmark 15% out of the fee collected towards the contribution of the management, for the purpose of payment of gratuity etc.

8. In fact, various provisions of the A.P. Education Act and the Rules made thereunder obligate every recognized School to follow certain conditions as mandatory for its registration. It is necessary to extract Sections 20 and 33E of the Act, which read thus.

"20. Permission for establishment of educational institutions:- (1) and (2)……

(3) Any educational agency applying for permission under sub-section (2) shall,--

(a) before the permission is granted, satisfy the authority concerned,--

(i) that there is need for providing educational facilities to the people in the locality;

(ii) that there is adequate financial provision for

continued and efficient maintenance for the institution as prescribed by the competent authority;

(iii) that the institution is proposed to be located in sanitary and healthy surroundings.

(b)……

(c) within the period specified by the authority concerned in the order granting permission,-

(i) appoint teaching staff qualified according to the rules made by the Government in this behalf;

(ii) satisfy the other requirements laid down by this Act and the rules and orders made thereunder failing which it shall be competent for the said authority to cancel the permission.

(4)……

33E. Conditions of service of staff:- The teaching and non-teaching staff of the registered schools shall be entitled to receive such salaries and allowances and shall be subject to such conditions of service as may be prescribed."

9. Rule 15 of the Andhra Pradesh Registered schools (Establishment, Recognition, Registration and Regulation) Rules,1987 reads as follows:

"**15. Appointment of teaching and non-teaching staff:-**

(a) and (b)……..

(c) The conditions of service other than the scales of pay prescribed by the Government for the teaching and non-teaching staff working in the recognized private schools shall also be applicable to the teaching and non-teaching staff appointed in the Registered Schools."

10. From a reading of the said Rule, it is clear that all the service conditions prescribed by Government for teaching and non-teaching staff working in a recognized private school except the prescribed scales of pay shall be applicable to the teaching and non-teaching staff of the Registered School. Thus, it is clear that except the salaries, all other service conditions are one and the same for the teachers working in Government, aided as well as recognized private schools. Apart from this, from the above sections/rules, it is clear that before permission is granted, the management of the private

school is supposed to satisfy the authority concerned as to the need for providing educational facilities and there is adequate financial position for continued and efficient management of the institution. The teaching and non-teaching staff are entitled to receive even salaries and allowances also, subject to such conditions as may be prescribed by the competent authority. If such conditions are not satisfied, the competent authority can cancel the permission granted to establish school. All these provisions go to show that a duty is cast on the management to follow all the service conditions applicable to the Government teachers except to the scales of pay. The Government as well as aided teachers are entitled for receiving gratuity for the service rendered by them in the Schools. Likewise, the petitioner is also entitled for claiming gratuity on par with Government teachers and the teachers of aided schools.

11. Even otherwise, the provisions of Payment of Gratuity Act,1972 are applicable as the School run by the respondents is an establishment as contemplated under the said Act. It may not be necessary to consider whether the respondents are amenable to writ jurisdiction vis-à-vis Article 12 of the Constitution of India or not once it is found that the respondents are cast upon with a duty to follow certain statutory duties and there is violation of such duties, for non-compliance of those provisions a writ can be directly issued. This view is fortified by the Judgment of the Division Bench of Himachal Pradesh High Court in **AGARWAL B.L. v. HIMACHAL CONSULTANCY ORGANIZATION**[5] wherein it was held as follows:

> "There is no need to consider whether the first respondent is amenable to writ jurisdiction vis-à-vis Article 12 of the Constitution as we are of the opinion that this Court can issue an appropriate writ for non-compliance of the provisions of the Payment of Gratuity Act, which is a welfare legislation."

12. The gratuity, like pension, is a retirement benefit for long and continuous service as a provision for old age. It is earned as a matter of right on fulfilling conditions subject to which it is earned. It is not a gratuitous payment depending upon the discrimination, sweet will or fancy of the employer. Gratuity is not only a retiral benefit, but is also a reward for good, efficient and faithful service rendered for a considerable period.

13. The petitioner had accrued a right in her favour, entitling her, for payment of gratuity, which could not be denied in the manner as has been done by the respondents. In **TARACHAND**'s case (1 supra), the Rajasthan High Court held that the School Teachers in

> educational institutions receiving grant-in-aid are also entitled to gratuity and pension at the rates admissible to teachers in the Government educational institutions. Thus, an institution receives grant-in-aid or not, the employees of such institutions are entitled for gratuity according to their eligibility, may not be on par with government teachers or aided teachers.
>
> 14. Be it noted that the petitioner asserted that the Teachers, who retired from service of the respondent-school later to her, were also paid gratuity, whereas she is denied of the same. No counter affidavit is filed and there is no denial of the said assertion made by the petitioner in the affidavit filed in support of the Writ Petition.
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> 15. It is also not in dispute that the 2nd respondent-school is a registered one and the Management in the very confirmation order of appointment has categorically stated that the petitioner is entitled for other allowances etc. as per State Government rules. In this view of the matter, this Court is of the considered opinion that the petitioner cannot be denied Gratuity and she is entitled to claim gratuity as a matter of right. Therefore, the respondents are directed to pay the amount in respect of gratuity for which the petitioner is entitled, within a period of two months from the date of receipt of a copy of this order."

Insofar as the legal position is concerned, the Payment of Gratuity Act,1972 has been extended to the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as a class of establishments to which the said Act shall apply with effect from the date of publication of the Notification bearing F.No.S.420.13.95.SS II, dated 3-4-1997 in exercise of the powers conferred by Clause © of sub-section (3) of section 1 of the Act. Assuming that the Payment of Gratuity Act is not applicable to a teacher, the Management cannot escape its liability of paying gratuity to the 2nd respondent as per the said Rules of 1993.

Insofar as the State of Andhra Pradesh is concerned, A.P. Revised Pension Rules,1980 are made applicable to teaching and non-teaching staff in the educational institutions. Rule 46 of the said Rules reads as under:

> "**46. Retirement Gratuity:-** (1)(a) A Government servant, who has completed five years qualifying service and has become eligible for service gratuity or pension under Rule 45, shall on his retirement, be granted as retirement gratuity,--……"

Further, in G.O.Ms.No.845, Education, dated 19-9-1979 Government extended the benefit of voluntary retirement to teachers working in Schools under local bodies, i.e. Zilla Parishads, Panchayat Samithis and Municipalities. It seems, several representations were received from the Teacher M.L.Cs and various Teacher Organizations requesting that the scheme of voluntary retirement, which is applicable to Government Teachers and for the employees of local bodies may be extended to the teachers in the Schools under aided Managements also. Therefore, the Government after careful examination of the Orders issued in G.O.Ms.No.413, Finance and Planning, dated 29-11-1977 read with G.O.Ms.No.329, Finance, dated 30-12-1981 and G.O.Ms.No.845, Education, dated 19-9-1979 extended the benefits to the Teachers working in the aided Schools, which are under the scheme of payment of salaries to their staff through Banks and who are governed by A.P. Liberalized Pension Rules and A.P. Government Servants (Family Pension) Rules,1964 etc., through G.O.Ms.No.251, dated 9-3-1982. Thus, *mutatis mutandis* the payment of gratuity, which is applicable to Government employees, has been extended to the teaching and non-teaching staff in the educational institutions of Government as well as aided. Thus, it is clear that in the State of Andhra Pradesh, both the teaching and non-teaching staff, in the private educational institutions are entitled for gratuity.

From the above, it is clear that in the State of Andhra Pradesh, Teachers are entitled for gratuity, may be, they are not employees as defined under Section 2(e) of the Act and the provisions of the said Act

are not applicable to them.

Deducing the ratio and judgment of this Court in **SUSHILA THOMAS** case (4 supra), I am of the opinion that a teacher in a registered/recognized school is also entitled for gratuity. But, the question remains, as to whether the Act is applicable and whether the petition/application is maintainable before the Controlling Authority. Since it is held by the Apex Court that a teacher is not an employee as defined under the Act, the very claim petition is not maintainable. But, nonetheless, the respondent is entitled to gratuity on par with his counterparts i.e. Teachers in Government, local body and aided schools as contemplated under Rule 18 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules,1993. Further, it is not out of place to notice that the private educational institutions are collecting fabulous fees and, therefore, they cannot shirk their responsibility of paying gratuity to their teachers on par with the teachers in the Government, Local Body and Aided Schools as they are obligated to earmark 15% of the fees collected as management's contribution towards staff benefits, like gratuity, Teachers Provident Fund, Group Insurance Scheme etc.

For all the above reasons, the impugned Order is set aside. However, I deem it appropriate to decide the matter here in this *lis* instead of directing the employee/respondent to move appropriate authority at this length of time. Therefore, the petitioner-employer is directed to pay gratuity to the 2nd respondent as is applicable to the teachers working in Government/Aided Schools in the State of Andhra Pradesh.

Accordingly, this Writ Petition is disposed of. No costs.

01-8-2007

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[1] 1994 Lab I.C. 1542

[2] 1989(1) LLN 624

[3] AIR 2004 SC 1426

[4] 2003(4) ALT 432

[5] 1999(III) LLJ (Suppl.) 296